IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 14507 of 2004

Between:

Smt.Rafia Begum, W/o. Audulah, R/o.H.No.8-3-231/A/292 & 293, S.K.Nagar, Hyderabad.(Sc.No.30924).

..... PETITIONER

AND

1 Transmission Corp.of A.P.Ltd., (A.P.TRANSCO) rep.by its Chief M.D., Vidyut Soudha, Khairatabad, Hyderabad.
2 The Assistant Divisional Engineer, (Electrical), Operation, City-IV,

Ameerpet, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of writ of Mandamus declaring the provisional assessment notice in letter No.ADE/OP/F.Pilf/D.No.403, dated 6-8-2004 of the 2nd respondent as highly illegal, arbitrary, unjust and contrary to section 126 of the Electricity Act, 2003 and consequently set aside the same.

Counsel for the Petitioner: MR.D.V.NAGARJUNA BABU

Counsel for the Respondents: MR.KANAKAMEDALA RAVINDRA KUMAR

The Court made the following:

ORDER:

The petitioner seeks a writ of Mandamus declaring the provisional assessment notice dated 06.08.2004 issued by the second respondent, as arbitrary and illegal and contrary to Section 126 of the Electricity Act, 2003 (for short 'the Act') and consequently set aside the same.

The petitioner states that she is the owner of a house bearing H.No.8-3-231/A/292 & 293, S.K.Nagar, Hyderabad, which has two LT Service Connections (Domestic) in respect of the ground and first floors of the said premises.

While so, the petitioner was served with the impugned notice dated 06.08.2004 stating that on 05-08-2004 her premises was inspected by the ADE / DPE and it was noticed that she indulged in pilferage of energy by tapping the service wire in all the three phases and bypassing the meter and connecting the bypassed wires to a switch controlled mechanism which was located behind the almirah and thus it is evident that she is indulging in pilferage of energy. The value of the pilfered energy was provisionally estimated at Rs.3,63,281/- and the petitioner may make a representation to the Superintending Engineer, Erragadda who will conduct the enquiry into the matter. The electricity supply was also disconnected on 06-08-2004 and the petitioner was advised to pay Rs.1,81,641/- being half of the estimated value of pilfered energy if she is desirous of obtaining restoration pending enquiry. The said notice is under challenge in this writ petition.

I have heard the learned Counsel for the petitioner and the learned Standing Counsel for the respondents Sri Kanakamedala

Ravindra Kumar.

The learned counsel for the petitioner contends that the assessment made by the respondents under the impugned notice by taking 12 months as the period of assessment and applying the tariff rate at thrice the normal rate purportedly in exercise of power under condition No.39 of Terms and Conditions of Supply is untenable in view of the provisions of the Electricity Act, 2003 which came into force with effect from 10-12-2003. He contends that the impugned notice is not in consonance with the provisions of the Electricity Act, 2003 and that the impugned action of demanding 50% of provisionally estimated amount for restoration of power supply is not contemplated under the said Act.

It is also to be noted that a Division Bench of this Court in Writ Appeal Nos.452 and 477 of 2004, while considering the scope of the provisions of the Electricity Act, 2003 held that under the Act there is no power, while issuing provisional assessment to forthwith step or disconnect power supply or call upon to pay even part of the provisional assessment amount till final assessment is made.

In the circumstances, and following the ratio laid down by the Division Bench in the above case, I am of the view that the impugned notice cannot be sustained. Accordingly, the impugned provisional assessment notice dated 06.08.2004 is set aside and it is left open to the Assessing Authority to make a final assessment in accordance with law after affording due opportunity to the petitioner to submit her explanation.

Accordingly, the writ petition is disposed of at the admission stage with a further direction to the respondents to restore the power supply to the petitioner forthwith. No costs.

17.08.2004

VGB

To

1 The Chief Managing Director, Transmission Corporation of A.P.Ltd.,

(A.P.TRANSCO), Vidyut Soudha, Khairatabad, Hyderabad.
2 The Assistant Divisional Engineer, (Electrical), Operation, City-IV,

Ameerpet, Hyderabad.

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